

Notice of Allowability

Application No.

09/994,068

Examiner

Laura B. Goddard, Ph.D.

Applicant(s)

ARAKAWA ET AL.

Art Unit

1642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to July 25, 2007.
2. ☒ The allowed claim(s) is/are 19,21-24,29 and 30.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☒ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☒ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☒ Other See Continuation Sheet.

Continuation of Attachment(s) 9. Other: Supplemental Examiner's Amendment.

EXAMINER'S AMENDMENT

1. The Amendment filed July 25, 2007 in response to the Office Action of January 25, 2007 is acknowledged and has been entered. Claims 19 and 30 were amended. Claims 19-24, 29, and 30 are currently under prosecution.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Elisabeth Barek on September 25, 2007.

2. The application has been amended as follows:

In the claims:

Claim 19: A method for treating cancer characterized by overexpression of Her2, in a patient, comprising administering ~~an~~ a monoclonal antibody or fragment thereof that binds an epitope on Her2 which is recognized by a monoclonal antibody produced by hybridoma cell line ATCC. No. HB 12078, and which induces apoptosis in Her2 overexpressing cells.

Cancel claims 20, 25-28, 31-41, and 44-56.

Deposit of Biological Materials Requirement

3. It is noted that Applicants have deposited the biological materials (p. 10 of the specification, see amendment made 2/2/2006), and have submitted a receipt on 9/26/2007 from ATCC stating that the specific biological materials have been deposited under the Budapest Treaty. If a deposit has been made under the provisions of the Budapest Treaty, filing of an affidavit or declaration by applicant or assignees or a statement by an attorney of record who has authority and control over the conditions of deposit over his or her signature and registration number stating that the deposit has been accepted by an International Depository Authority under the provisions of the Budapest Treaty, that all restrictions upon public access to the deposits will be irrevocably removed upon the grant of a patent on this application and that the deposit will be replaced if viable samples cannot be dispensed by the depository is required. This requirement is necessary when deposits are made under the provisions of the Budapest Treaty as the Treaty leaves this specific matter to the discretion of each State.

In addition to the conditions under the Budapest Treaty, applicant is required to satisfy that all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of a patent in U.S. patent applications.

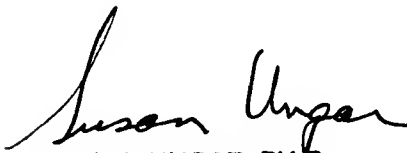
Terminal Disclaimer


4. Applicants submitted a terminal disclaimer on 9/26/2007 to obviate double patenting with US Patent No. 6,458,356.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura B. Goddard, Ph.D. whose telephone number is (571) 272-8788. The examiner can normally be reached on 7:00am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shanon Foley can be reached on 571-272-0898. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


SUSAN UNGAR, PH.D
PRIMARY EXAMINER


Laura B Goddard, Ph.D.
Examiner
Art Unit 1642

Supplemental EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Elisabeth Barek on October 29, 2007 and a copy of the suggested amendments was faxed to Examiner on October 30, 2007.

NOTE: The specification was amended to reflect continuing data in the transmittal letter mailed November 27, 2001, see page 2, section 9. The specification amendment was amended by inserting into page 1, in the first line after the title:

--This application is a continuation of U.S. Application Serial No. 09/046,785, filed March 23, 1998, which is a continuation of U.S. Application Serial No. 08/568,072, filed December 5, 1995. U.S. Application Serial No. 08/568,072 is being relied upon and is incorporated by reference herein for any purpose.

2. The application has been amended as follows:

In the specification:

Please amend the first paragraph on page 1 of the specification as below:

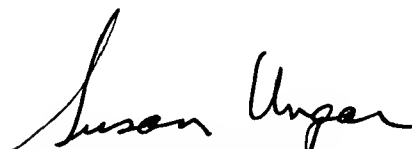
This application is a continuation of U.S. Patent Application ~~Serial~~ No. 09/046,785, filed March 23, 1998, now U.S. Patent No. 6,458,356, which is a continuation of U.S. Patent Application ~~Serial~~ No. 08/568,072, filed December 5, 1995, now U.S. Patent No. 5,783,186. U.S. Patent Application ~~Serial~~ No. 08/568,072 is being relied upon and is incorporated by reference herein for any purpose.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura B. Goddard, Ph.D. whose telephone number is (571) 272-8788. The examiner can normally be reached on 7:00am-3:30pm.


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